

# Meeting Virtually: Amendments to the Open Meetings Act

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# Open Meetings Act

- The Open Meetings Act was expressly enacted for the purpose of:
  - requiring certain meetings of public bodies to be open to the public,
  - to require notice and the keeping of minutes of the meetings,
  - to provide enforcement of the Act,
  - to provide invalidation of decisions under certain circumstances, and
  - to provide penalties for non-compliance.

# Background of PA 228 of 2020

- Executive Order 2020-154 (issued July 17, 2020)
  - Allowed for remote meetings of public bodies.
  - Temporarily suspended OMA requirements to the extent that they required meetings of a public body to be held in a physical place or physical presence of one or more members.

# Background of PA 228 of 2020

- October 2, 2020 Michigan Supreme Court decision.
- Purpose of the amendments is to provide provisions similar to EO 2020-154 directly in the OMA.

# When do the amendments take effect?

- Immediately (October 16, 2020)
- Retroactive to March 18, 2020

# Overview of PA 228 of 2020

1. Absence of a public body member under the OMA.
2. Requirements for electronic public meetings.



# 1. Absence of a public body member

- Existing provisions under the OMA:
  - Required procedures for members of the military ONLY.
  - Required notification of the member's absence.



# 1. Absence of a public body member

## ■ Revisions under the new law

- Now must have procedures for members absent due to:
  - Military duty
  - A medical condition OR
  - A statewide or local state of emergency or state of disaster.

# 1. Absence of a public body member

■ What is a “Medical Condition”?

■ *Illness, injury, disability, or other health-related condition.*

# 1. Absence of a public body member

- Procedures must provide for 2-way communication.
- Members must publicly announce at the outset of the meeting they are attending remotely.
- Unless absent due to military duty, member must state where they are located/attending remotely from.

# 1. Absence of a public body member

- Procedures must provide a way to notify the public of the member's absence and let them know how to contact that member before the meeting to give input on anything that will come before the public body.

## 2. Requirements for electronic public meetings

## 2. Requirements for electronic public meetings

- Amendments set forth permissible purposes for remote meetings based on three timeframes:
  - March 18, 2020 (retroactive) – December 31, 2020
    - Any reason
  - January 1, 2021 – December 31, 2021
    - Military duty, medical condition, statewide/local state of emergency or disaster
  - After January 1, 2022
    - Military duty only

## 2. Requirements for electronic public meetings

- Caveats to remote meetings held because of a **statewide or local state of emergency or state of disaster**:
  - May only be held to permit the electronic attendance of a member of the public body who resides in the affected area; and
  - To permit the electronic meeting of a public body that usually holds its meetings in the affected area.



## 2. Requirements for electronic public meetings

- Caveat to remote meetings held because of military duty or medical condition:
  - Only those members may participate remotely.

## 2. Requirements for electronic public meetings

- 2-way communication requirements:
  - Members of the public body can all hear one another.
  - Public comment period.
  - Typed comments.
- No physical place required.

# 2. Requirements for electronic public meetings

## II Notice provisions

- If the public body has an official internet presence:
  - Post notice of the electronic meeting on its website at least 18 hours before the meeting.
  - Notice must include:
    - Why meeting electronically
    - How members of the public can participate
    - How members of the public can contact members of the public body to provide input
    - How persons with disabilities can participate

# 2. Requirements for electronic public meetings

## ■ Agenda

- If a public body has an official internet presence:
  - Make the agenda available online at least 2 hours before the start of the meeting.

## 2. Requirements for electronic public meetings

- Other OMA requirements still apply:
  - No registration is required.
  - Closed sessions must be maintained.
  - A person may still record the meeting.
  - A person may not be excluded from a meeting except in certain circumstances.

# Open Meetings Act Remedies

- A decision made by a public body may be invalidated if the public body has not complied with the Open Meetings Act.
- In any case where a public body discovers it has failed to comply with the Act or is charged with failing to comply, the public body may re-enact the disputed decision in conformity with the Act.
- If a public body violates the Open Meetings Act, a person may commence a civil action to compel compliance or to enjoin further non-compliance with the Act.

# Open Meetings Act Remedies

- Possible civil penalties
  - Court costs
  - Attorney fees
  - \$500 in damages
  
- Possible criminal penalties
  - Misdemeanor
  - Fines
  - Worse if it is a habitual offense



# Takeaways

- Create remote participation procedures.
- Provisions could include:
  - Why a member may attend remotely.
  - 2-way communication procedures.
  - Public announcement at the outset of the meeting.
  - Procedures providing notice of absence of a member.
  - Meeting materials.
  - Notice/agenda postings.
  - How votes will be taken.
  - Rules for public attendance/comment.

# Takeaways

- Avoid texting, email or “round-the-horn” communications.
- Be mindful of existing OMA requirements that have not changed.

# Questions?

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